IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32 (2)(b)

Description of case

Writ Petition N0. 171 of 2005 (S/B)

Date of decision: 4th January, 2006

A.F.R. (Approved for reporting.)

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Not approved for reporting

Date Initial of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 171 of 2005 (S/B)

Param Jeet Singh S/o Sri Harbansh Singh,
At present posted as Executive Engineer
(holding the charge of Superintending Engineer),
Minor Irrigation Division,
District Nainital. …….. Petitioner

Versus

1. State of Uttaranchal,
   through Secretary,
   Department of Minor Irrigation,
2. Chief Engineer,
   Minor Irrigation,
   Canal Road, Ballupur,
   District Dehradun.
3. Mohd. Umar,
   Superintending Engineer,
   Circle Pauri,
   Department of Minor Irrigation,
   Pauri, District Pauri Garhwal. ……. Respondents

Mr. L.P. Naithani Senior Advocate assisted by Mr. Rakesh Thapliyal, Advocate for the petitioner.
Mr. K.P. Upadhyaya, Standing Counsel for the State of Uttaranchal.
Mr. S.N. Babulkar, Senior Advocate assisted by Mr. Tumul Nailwal, Advocate for respondent No. 3.

JUDGMENT

Coram: Hon'ble Cyriac Joseph, C.J.
Hon'ble J.C.S. Rawat, J

CYRIAC JOSEPH, C.J.

1. The petitioner is an Executive Engineer in the Minor Irrigation Department of the Government of Uttaranchal. He has filed this writ petition praying to quash Annexure 15 order dated 26.07.2005 passed by the first respondent – Secretary, Department of Minor Irrigation – placing the petitioner under suspension pending disciplinary proceedings against him. Though the writ petition was admitted on 05.08.2005, no interim order was passed staying the operation of the

impugned order. Hence, the petitioner has been under suspension during the pendency of this writ petition.

2. According to the petitioner, the impugned action of the first respondent placing the petitioner under suspension was *mala fide* and politically motivated. It is alleged that the petitioner was placed under suspension to frustrated the order passed by this Court in Writ Petition No. 146 of 2005 (S/B) wherein this Court had directed the respondents to convert on available vacancy of Superintending Engineer to unreserved category and to consider the petitioner also for promotion against the said vacancy and to treat the future vacancy in the cadre of Superintending Engineer as a vacancy reserved for Scheduled Caste and also the order passed by this Court in Writ Petition No. 22 of 2005 (S/B) wherein the transfer of the petitioner was stayed. A counter affidavit has been filed on behalf of the first respondent denying the allegations in the writ petition and justifying the order of suspension. A counter affidavit has been filed by the third respondent Mr. Mohd. Umar, Superintending Engineer denying the allegations made by the petitioner against him.

3. For a proper appreciation of the rival contentions, it is necessary to reproduce the background of the case as narrated in the writ petition. The petitioner and Mr. A.S Asgar and Mr. Mohd. Umar (third respondent herein) were appointed as Assistant Engineers on 16.04.1986 on the recommendation of the Public Service Commission. Though they were appointed on the same date, the petitioner was placed as junior to the other two officers. Thereafter, the petitioner and Mr. S.A. Asgar and Mr. Mohd. Umar were promoted to the post of Executive Engineer w.e.f. 22.07.1997. In the cadre of Executive Engineer also, the petitioner was placed junior to the other two officers. As per Annexure 4 Government Order dated 19.05.2004, three posts of Superintending Engineers were sanctioned in the Minor Irrigation Department of the Government of Uttaranchal. As per the U.P. Engineering Services (Minor Irrigation Department)

Rules, 1991 which are admittedly applicable to the Minor Irrigation Department of the Government of Uttaranchal, the newly sanctioned three posts of Superintending Engineer were to be filled-up by promotion from the cadre of Executive Engineers. According to the Roster of Reservation, the first vacancy will go to a Scheduled Caste candidate and thereafter, four vacancies will go to General Category candidates. Since no Scheduled Caste candidate was available for promotion, nobody could be promoted against the vacancy reserved for Scheduled Caste. Against the General Category vacancies, Mr. Mohd. Umar and Mr. A.S. Asgar who are admittedly senior to the petitioner were promoted. Since the petitioner belongs to General Category, he could not be promoted against the vacancy reserved for Scheduled Caste. However, by an order dated 18.11.2004 (Annexure 7), the petitioner was given the additional charge of Superintending Engineer. Since the, he was holding the additional charge of the newly created post of Superintending Engineer of Haldwani Circle in addition to his regular charge of Executive Engineer, Nainital Division. Suddenly by an order dated 19.02.2005, the order dated 18.11.2004 transferring the petitioner to Nainital Division with additional charge of Superintending Engineer of Haldwani Division was cancelled and the petitioner was transferred to the office of the Chief Engineer in Dehradun as a Staff Officer. One Sri Suresh Chandra Arya, Assistant Engineer was directed to hold the additional charge of Executive Engineer of Minor Irrigation Division, Nainital. By the very same order, respondent No. 3 Mr. Mohd. Umar was directed to hold the charge of Superintending Engineer, Minor Irrigation Circle, Haldwani. Alleging that the said transfer of the petitioner was due to political interference, the petitioner filed Writ Petition No. 22 of 2005 (S/B) challenging the transfer. It was also pointed out that there was no justification for giving the charge of Executive Engineer to an Assistant Engineer and for giving charge of Superintending Engineer, Haldwani to the Superintending Engineer of another circle i.e. Pauri which is situated at a distance of 370 Kms. from Haldwani. The said writ petition was admitted on 24.02.2005

and an interim order of stay was granted. However, the Government took the stand that the stay order enabled the petitioner to continue as Executive Engineer, Nainital Division and that it did not stand in the way of Mr. Mohd. Umar holding charge of Superintending Engineer, Haldwani Circle. Even though respondents Nos. 1 and 2 in the said writ petition filed Civil Misc. Application No. 2030 of 2005 seeking further orders so that departmental work in the Haldwani Circle can be carried out smoothly, the Court refused to modify the earlier orders and dismissed the application and the petitioner continued to be Executive Engineer, Nainital Division. While the said writ petition is pending, the petitioner filed another Writ Petition No. 146 of 2005 (S/B) praying that regular promotion be made against the vacancy of Superintending Engineer which remained reserved for Scheduled Caste. It was pointed out by the petitioner in the said writ petition that no Scheduled Caste candidate would be available for promotion till the year 2011 and hence there is no justification for keeping the post vacant for such a long period. When the said writ petition came up for consideration on 19.07.2005, this Court took the prima facie view that the petitioner is entitled to have a direction to the respondents to convert the one available vacancy of Superintending Engineer to Unreserved Category and to consider the petitioner for promotion against the said vacancy and to treat the future vacancy in the cadre of Superintending Engineer as a vacancy reserved for the Scheduled Caste. Learned Addl. Chief Standing Counsel was directed to get instructions and make his submissions on 26.07.2005. After hearing the Addl. Chief Standing Counsel on 26.07.2005, this Court directed the respondents to consider the petitioner for promotion against the one available vacancy of Superintending Engineer and to treat the said vacancy as unreserved and further to treat the future vacancy as a vacancy reserved for Scheduled Caste. In compliance with this Court’s order dated 26.07.2005, the Departmental Promotion Committee met on 29.07.2005 but the petitioner’s name was not considered for promotion as Superintending Engineer on the ground that he had been placed under suspension by the first respondent as

per an order dated 26.07.2005. The petitioner has stated that after the Court passed the order dated 19.07.2005 taking a prima facie view that the petitioner is entitled to be considered for promotion against the one available vacancy of Superintending Engineer, the first respondent passed an order on 26.07.2005 placing the petitioner under suspension with a view to frustrate and direction issued by the Court to consider the petitioner for promotion against the one available vacancy of Superintending Engineer. The petitioner has also mentioned that the averments contained in the counter affidavit filed by the respondents in Writ Petition No. 22 of 2005 (S/B) made it clear that he was transferred from Nainital Division to Dehradun at the instance of Mr. Yashpal Arya, Speaker of the Legislative Assembly. It is against the above background that the petitioner has contended that the impugned suspension order is *mala fide* and politically motivated.

4. According to the averments in the counter affidavit filed on behalf of the first respondent, on 30.03.2005 Sri Mal Chand, M.L.A. Purola Constituency, District Uttarkashi gave an Adjournment Motion under Rule 56 to the Secretary, Uttaranchal Assembly. It was pointed out in the said letter that in Block Mori of the Purola Assembly Constituency, during the previous year, farmers had worked for the construction of water channels under the Accelerated Irrigation Benefit Programme (AIBP), but no payment was made to them in the construction of 8 to 10 channels despite their repeated requests. It was further stated in the letter that with the connivance of a few officers, cement was being misappropriated and the labour payment bills were being gulped. It was further mentioned in the said letter that Irrigation Channels which are of no utility to the public are being constructed and lakhs of rupees are being embezzled resulting in resentment from the public. The said notice dated 30.03.2005 was sent to the Chief Engineer and he was asked to furnish detailed information in the matter. On 30.03.2005 itself during the discussion on Budget Speech, some M.L.A.s raised certain issues relating to the

Minor Irrigation Department. Thereupon, the first respondent on 31.03.2005 directed the Additional Secretary, Minor Irrigation to furnish full details of Minor Irrigation Schemes in the districts to all the M.L.A.s concerned. The Additional Secretary was also directed to get detailed report from the Chief Engineer. The Additional Secretary asked the Chief Engineer, Minor Irrigation Department to furnish the details to the M.L.A.s Subsequently, the schemes of AIBP during 2002 to 2004 were verified and enquired into by Sri Pramod Kumar Singh, Officiating Executive Engineer, Minor Irrigation Division, Tehri. He submitted reports dated 04.04.2005, and 06.05.2005 to the Superintending Engineer and the Commissioner, Garhwal Division. In the report dated 04.05.2005, it was reported that out of 4000 meters long Irrigation Channels, only 1316 meters long Irrigation Channels were found at site during verification and 2734 meters long Irrigation Channels were not found at site. According to the report, 2734 meters long Irrigation Channels, were not actually constructed and the amount was embezzled on the basis of false measurement and bills. In the verification report dated 06.05.2005 also, it was reported that among 17 schemes inspected, 7459.60 meters long channels and one tank were not found at site. Thereupon, the Superintending Engineer, Minor Irrigation Department, Pauri Circle forwarded the two verification reports to the Chief Engineer on 09.05.2005 with copy to the Secretary, Minor Irrigation Department. The Chief Engineer on 19.05.2005 forwarded to the Government the reports of the Officiating Executive Engineer and the report of the Superintending Engineer. The Chief Engineer also forwarded charge sheets in respect of Mr. Mahesh Dhyani, Junior Engineer, Mr. Rajeev Kumar, Assistant Engineer and Mr. Param Jeet Singh, Executive Engineer (petitioner herein) who were allegedly involved in the above-mentioned irregularities. After scrutinizing the verification / inquiry report of the AIBP Scheme in Mori Block of district Uttarkashi, the Government came to the conclusion that Sri Mahesh Dhyani, Junior Engineer is directly responsible for construction, measurement and payment of the scheme; Sri Rajeev Kumar, Assistant Engineer is

directly responsible for supervision, verification, measurement and payment of the schemes and Sri Param Jeet Singh, Executive Engineer is responsible for supervision, verification, drawing and disbursing. The Government felt that all the three employees had failed to discharge their duties and indulged in misuse and embezzlement of Government fund. Keeping in view the nature of the charges, the Government decided to place the above-mentioned three Engineers under suspension pending inquiry. Accordingly, separate orders were issued on 26.07.2005 placing the three officers under suspension. Charge sheets also were issued to the three Engineers on 27.05.2005.

5. Though the respondents have tried to give the impression that Sri Pramod Kumar Singh conducted verification of the schemes of AIBP and sent the reports dated 04.05.2005 and 06.05.2005 to the Superintending Engineer as directed by the Government / Chief Engineer in the context of the adjournment motion submitted by Sri Mal Chand, M.L.A. and the discussions on the Budget Speech, the relevant files do not support the said claim. It was found from the files that the Executive Engineer had suo motu sent the reports. It is also significant that on the basis of the report dated 06.05.2005 of Pramod Kumar Singh (Officiating Executive Engineer), the third respondent claims to have inspected the site in Mori Block which is about 300Kms. away from Pauri on 07.05.2005 itself. The third respondent sent his report to the Chief Engineer on 09.05.2005. The Chief Engineer forwarded the reports to the Government on 19.05.2005. The suspension order was issued on 26.07.2005 after this Court expressed the view on 19.07.2005 that the petitioner is entitled to be considered for promotion to the post of Superintending Engineer. It is also significant that the petitioner had filed writ Petition No. 22 of 2005 (S/B) challenging his transfer from Haldwani to Dehradun alleging that the transfer was mala fide and due to political interference and on 24.02.2005, this Court had passed an

interim order staying the transfer and on the strength of the stay order passed by the Court, the petitioner was continuing at Haldwani.

6. In spite of the above-mentioned peculiar, background and circumstances of the suspension of the petitioner, we do not consider it necessary to examine the question whether the impugned order of suspension is *mala fide* and politically motivated, because, in our view the suspension order is liable to be quashed on other grounds.

7. In the judgment in **Writ Petition No. 210 of 2004 (S/B) (S.K. Goel Vs of Uttaranchal and another),** this Court has held as follows:

> "4. It is not necessary to place a Government employee under suspension in every case where disciplinary proceedings are contemplated. The continuance of the employee in the same post or at the same station may be considered likely to influence or prejudice the enquiry and the disciplinary proceedings. Sometimes, in view of the nature of the post held by the officer and the nature of the irregularities alleged, the very continuance of the officer in service during the disciplinary proceedings may be considered undesirable. In the first case, the proper conduct of enquiry and disciplinary proceedings can be ensured by a mere transfer of the officer. Only in the second case the officer need be placed under suspension. Hence, it is incumbent upon the disciplinary authority to consider whether a transfer of the officer will be sufficient or whether suspension itself is required. Only when the disciplinary authority is satisfied that suspension itself is required, an officer can be placed under suspension. If and when the suspension is questioned in a Court of law, the disciplinary authority is bound to show that he had arrived at a satisfaction that a mere transfer was not sufficient and that suspension itself was required. If the disciplinary authority fails to show that he had properly considered the matter and was satisfied that suspension itself was required, the order of suspension is liable to be declared illegal and arbitrary and quashed on that basis. It should be remembered that though suspension is not a punishment, it visits the employee with serious civil consequences and loss of reputation and prestige. Hence, an order of suspension should not be passed lightly, casually or without proper application of mind."

In the present case, the alleged irregularities were in connection with works executed in the Mori Block in district Uttarkashi. When the impugned order of suspension was passed, the petitioner was not working in Mori Block or in district Uttarkashi, He was working far away in Nainital district. The petitioner had no access to the records relating to the case and he was not in a position to influence or prejudice the departmental inquiry and the disciplinary proceedings. The nature of the irregularities alleged to have been committed by the petitioner are not such that his continuance in service during the disciplinary proceedings is undesirable. Even according to the averments in the counter affidavit, the Government, after scrutinizing the verification / inquiry reports of the AIBP Scheme in Mori Block, came to the conclusion that Sri Mahesh Dhyani, Junior Engineer was directly responsible for construction, measurement and payment of the scheme and Sri Rajeev Kumar, Assistant Engineer was directly responsible for supervision, verification, measurement and payment of the schemes. Sri Param Jeet Singh, Executive Engineer (petitioner herein) was held responsible only for supervision, verification, drawing and disbursing. Even in the charge sheet issued to the petitioner on 27.07.2005, the only charge is that he had not physically verified the works as per the standard and failed to discharge his supervisory duties as Drawing and Disbursing Officer as a result of which illegal payments were made. The Executive Engineer has to conduct verification of only 1 to 2% of the measurements. Therefore, the petitioner cannot be expected to verify the entire work. Even though the petitioner was the Drawing and Disbursing Officer, he passed the bills on the basis of the verification reports of the Junior Engineer and the Assistant Engineer. Hence if at all there was any lapse on the part of the petitioner, it was only supervisory lapse. There is no allegation that the petitioner was in collusion with the Junior Engineer and the Assistant Engineer or that he had misappropriated or embezzled Government money. In such circumstances, there was no necessity to place the petitioner under

suspension. The continuance of the petitioner in service at a far away district of Nainital cannot influence or prejudice the departmental inquiry or the disciplinary proceedings. However, the Government files made available for the perusal of the Court disclose that the Government had not applied its mind to the above relevant aspects. The files do not disclose that the Government had arrived at a satisfaction that the transfer of the petitioner (which had already taken effect) was not sufficient and that suspension itself was required. As pointed out by this Court in S.K. Goel Vs. State of Uttaranchal and another, though suspension is not a punishment, it visits the employee with serious civil consequences and loss of reputation and prestige and therefore an order of suspension should not be passed lightly, casually or without proper application of mind. In the above circumstances, the decision of the Government to place the petitioner under suspension is liable to be declared illegal and arbitrary and the order of suspension is liable to be quashed on that basis.

8. The main allegation in the charge sheet issued to the petitioner on 27.07.2005 is that a part of the work stated to have been carried out was not found at site and payment was made for the work which was not actually done. One important evidence relied on in the charge sheet is Measurement Books Nos. 466L and 488L. In the affidavit filed along with Application No. 11306 of 2005, the petitioner has stated that the details of the Measurement Books mentioned in the charge sheet were not supplied to him. He has also stated that on 12.09.2005 public notice was published in a daily newspaper stating that Sri Mahesh Dhyani, the suspended Junior Engineer had not furnished the Measurement Books to the office of the Executive Engineer, Minor Irrigation Division, Dehradun and requiring him to furnish the Measurement Books in the said office. Learned counsel for the petitioner rightly contended that the charge sheet appears to have been prepared and issued without verifying the Measurement Books relied on in the charge sheet. Learned counsel also contended that a proper inquiry into the charges against the petitioner may not be

possible without the Measurement Books becoming available. In other words, it may not be possible to pursue the departmental inquiry against the petitioner and at any rate, it cannot be completed in the near future. Therefore, learned counsel for the petitioner contended that there is no justification for keeping the petitioner under suspension indefinitely. It is pointed out that the petitioner has already suffered suspension for a period of more than five months and the departmental enquiry has not reached anywhere. Having regard to the above facts and circumstances of the case, we are of the view that there is no justification for keeping the petitioner under suspension any further.

9. For the reasons stated above, the impugned order of suspension dated 26.07.2005 (Annexure 15) is quashed. Respondents Nos. 1 and 2 are directed to reinstate the petitioner in service forthwith without prejudice to the disciplinary proceeding pending against him. It is made clear that during the period the petitioner was under suspension, he will be entitled only for the eligible subsistence allowance, as he has not actually worked during the said period.

10. The writ petition is allowed in the above terms.

(J. C. S. Rawat, J.) **(Cyriac Joseph, C.J.)**

January 04, 2006

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